Cal. 148, 154, 131 Pac. 119, 121. Under the theory that the water in the defendant's pipe-line was personalty the plaintiff must have failed in the present action. For a contract indefinite in time by which one party agrees to supply a commodity to another at a fixed price may be terminated by either party on reasonable notice and after a reasonable time. *McCullough-Dalzell etc. Co.* v. *Philadelphia Co.*, 223 Pa. 336, 72 Atl. 633.

WILLS — CONSTRUCTION — FROM WHAT TIME A WILL SPEAKS. — Testator devised to his wife "my house in Urquhart St." Subsequently he bought another house in Urquhart Street, which he owned at the time of his death, and sold the first. A statute provides that "every will shall be construed with reference to the real estate comprised in it to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will." VICTORIA WILLS ACT, 1915, § 22. *Held*, that the testator's wife take the second house. *Watson* v. *Smith*, [1916] Vict. L. R. 540.

The statute is practically identical with § 24 of the English Wills Act and statutes in most of the United States. 1 VICT. c. 26, § 24. See 1 JARMAN, WILLS, 5 Am. ed., 602, n. 4. Its effect is to abolish the common law rule that after-acquired real estate could not be devised. It also raises a strong presumption that the will speaks from the date of the testator's death, but does not change the ultimate question, what was the testator's intention, as expressed by the will, which must of course be his intention at the time he made the will. The exact problem of the principal case has never before arisen, and there has been some difference among text-writers as to what should be its solution. See THEOBALD, WILLS, 7 ed., 130; 1 JARMAN, WILLS, 5 Am. ed., 608. The cases bearing on the point fall into two general groups. If the subject of the devise is such that the testator may well have intended to include any future additions or substitutions, it will be construed as speaking from the date of the testator's death. *Goodlad* v. *Burnett*, 1 K. & J. 341 ("my New 3% Annuities"); *Richmond* v. *Vanhook*, 3 Ired. Eq. (N. C.) 581 ("my chest and all that is in it"). See also *In re Slater*, [1907] 1 Ch. 665, 670. On the other hand, if the subject of the devise is such that the testator must have intended to include only the particular things falling within his description at the time the will was made, then it will be construed as speaking from the time of its execution. *Georgetti* v. *Georgetti*, 18 N. Z. L. R. 849 ("my dwelling house"); *In re Evans*, [1909] 1 Ch. 784 ("my house known as Cross Villa"); *In re Gibson*, 2 Eq. 669 ("my 1000 shares of stock" in the X. Co.); *Amshutz* v. *Miller*, 81 Pa. 212 (a devise to A. for life and after his death to "his widow"). *Cf. Webb* v. *Byng*, 1 K. & J. 580; *Williams* v. *Owen*, 9 L. T. (N. S.) 200; *Pattison* v. *Pattison*, 1 My. & K. 12. But *cf. Castle* v. *Fox*, 11 Eq. 542. In the principal case, the words "my house on Urquhart St." indicate a single, specific thing, and cannot contemplate any future additions or substitutions. It is submitted, therefore, that it falls within that class of cases in which the will should be construed as speaking from the time it was executed.

WILLS — LEGACIES AND DEVISES — DEDUCTION OF EXTINGUISHED NOTE FROM LEGACY UNDER SET-OFF CLAUSE. — A testator made a bequest to his son, from which were to be deducted all notes of the son owned by or held in trust for the testator at the time of his decease. The will next stated that he had already paid to the son certain large sums "which are not included in the indebtedness aforesaid." In a suit by the son for the legacy, the executors introduced a note equal in amount to the legacy. The son offered to prove that prior to the testator's death the note had been extinguished by merger of the mortgage given to secure it with the equity of redemption, and that the payment in return for which such note was given was the only large payment

made by the testator to the son. *Held*, that the offer of proof be refused and the note deducted in full. *Pierce* v. *Loomis*, 224 Mass. 226, 112 N. E. 1027.

The primary purpose in construing a will is to carry out the testator's intention, and when the latter is clearly expressed in the instrument its terms must be adhered to. Thus, where a testator provides that a specific sum or obligation be deducted from a legacy, the amount stated cannot be disputed although erroneous. *In re Wood*, 32 Ch. D. 517; *Dunshee* v. *Dunshee*, 243 Pa. St. 599, 90 Atl. 362. Similarly, although the specific obligation due from the legatee has become unenforceable, the expressed intent must prevail. *In re Fussell's Estate*, 129 Ia. 498, 105 N. W. 503. Even where the set-off clause is general, the same result is reached, if the obligation is merely unenforceable, as when barred by the Statute of Limitations. *In re Gillingham's Estate*, 220 Pa. St. 353, 69 Atl. 809. *Cf. Stephenson* v. *Norris*, 128 Wis. 242, 260, 107 N. W. 343, 349. But *cf. Golds* v. *Greenfield*, 2 Sm. & G. 476. But an extinguished claim is usually not within the terms of a general set-off clause. *Howe* v. *Howe*, 184 Mass. 34, 67 N. E. 639. Thus in the principal case it is difficult to see how an extinguished note can fall within the terms of the will as one held in trust at the testator's decease. Moreover, the testator must have received substantial satisfaction in the merger of the mortgage and equity of redemption. In those cases where the deduction was made, the unenforceable obligation had never been satisfied, and the testators usually intended the distribution of their entire property in desired proportions. See *Sibley* v. *Maxwell*, 203 Mass. 94, 103, 89 N. E. 232, 234. But where satisfaction has been had, a deduction destroys this desired equality and results in a contrary inequality. *Aster* v. *Ralston*, 179 Ill. App. 194; *Musselman's Estate*, 5 Watts (Pa.) 9. Even where the set-off clause was specific, the deduction has been lessened by whatever amount had actually been received by the testator. *Sibley* v. *Maxwell*, *supra*. Furthermore, if the note in question represents the only large payment ever made by the testator, the inference from the will seems inevitable that he did not intend this note to be deducted.

BOOK REVIEWS

A HISTORY OF CONTINENTAL CRIMINAL LAW. By Carl Ludwig von Bar and others. Volume V of the Continental Legal History Series, published under the auspices of the Association of American Law Schools. Boston: Little, Brown and Company. 1916. pp. 561.

This volume is part of the series through which the Association of American Law Schools seeks to put before the public, and particularly the legal profession, the best results of modern juristic thought upon the history and development of Continental European law. The plan followed in this volume has been to take the book of Von Bar, "Geschichte des deutschen Strafrechts und der Strafrechtstheorien," as the basis of the volume. As that work, however, related only to German law, and as it was desired to include as many as possible of the Continental countries in this volume, Von Bar's work has been supplemented by inserting selections from other writers on the history of criminal law in European countries other than Germany. Substantially all European countries of any importance are included, with the exceptions of Italy, Spain, Portugal, and Russia. For Italian law the editors refer to Volume VIII of the series, by Professor Calisse. In the case of Spain and Portugal the omission is explained on the ground that they have not been able to find any suitable account existing. For the omission of Russia no reason is given, and the name of Russia does not even appear in the index. It would certainly seem as though in any volume designed to cover the history of Continental criminal law an omission